



13 CFR Part 123

RIN: 3245-AH33

Disaster Assistance Loan Program Statutory Updates

AGENCY: U.S. Small Business Administration.

ACTION: Direct final rule.

SUMMARY: SBA is amending the disaster assistance regulations to reflect changes made to the Small Business Act by several recent statutes. These changes provide two new types of disaster declaration authority and revise eligibility for the Military Reservist Economic Injury Disaster Loan (MREIDL) program. This direct final rule conforms the regulations to the Act by adopting the new statutory requirements without change.

DATES: This rule is effective [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] without further action, unless significant adverse comment is received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If significant adverse comment is received, SBA will publish a timely withdrawal of the rule in the Federal Register.

ADDRESSES: You may submit comments, identified by number SBA-2023-0001 through the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

SBA will post all comments on www.regulations.gov. If you wish to submit confidential business information (CBI) as defined in the User Notice at www.regulations.gov, please send an email to Eric Wall at eric.wall@sba.gov and highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. All other comments must be submitted through the Federal eRulemaking Portal described above. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as

confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Eric Wall, Office of Disaster Recovery and Resilience, 409 3rd St. SW., Washington, DC 20416, (202) 205-6739.

SUPPLEMENTARY INFORMATION:

I. Background

This direct final rule implements regulatory changes required by three recent laws amending the Small Business Act: The Disaster Assistance for Rural Communities Act, Public Law 117-249 (December 20, 2022); the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116-136 (March 27, 2020); and the National Defense Authorization Act for Fiscal Year 2020 (NDAA 2020), Public Law 116-92 (December 20, 2019). SBA has already implemented all of these statutory changes except for the new rural declaration authority authorized by the Disaster Assistance for Rural Communities Act, which requires SBA to issue implementing regulations within 120 days after enactment. The specific regulatory changes are further described below.

II. Description of Regulatory Changes

SBA is revising 13 CFR 123.3, *How are disaster declarations made?*, by adding two additional ways SBA is authorized to declare disasters. New paragraph (a)(6) describes SBA's declaration authority under the Disaster Assistance for Rural Communities Act. 15 U.S.C. 636(b)(16). Under this new authority, SBA is authorized to declare a disaster in a "rural area" upon request by the Governor of the State or the Chief Executive of the Indian tribal government in which the rural area is located if the following conditions are met: (1) the rural area has received a major disaster declaration from the President under Section 401 of the Robert T. Stafford Disaster Relief and

Emergency Assistance Act (the Stafford Act) (42 U.S.C. 5170)¹, (2) individual assistance under section 408 of the Stafford Act was not authorized for the rural area, and (3) any home, small business concern, private nonprofit organization, or small agricultural cooperative in the rural area has incurred “significant damage.” The Disaster Assistance for Rural Communities Act defines “rural area” as any county or other political subdivision of a State, the District of Columbia, or a territory or possession of the United States that is designated as a rural area by the Bureau of the Census. The Act defines “significant damage” as uninsured losses of 40 percent or more of the estimated fair replacement value or pre-disaster fair market value of the damaged property, whichever is lower. SBA has incorporated these new statutory definitions into new § 123.3(a)(6).

SBA is also adding paragraph (a)(7) to describe SBA’s new declaration authority authorized by the CARES Act. 15 U.S.C. 636(b)(2)(D). Section 1110(f) of the CARES Act provides SBA the authority to declare an economic injury disaster following a declaration of an emergency involving Federal primary responsibility under Section 501(b) of the Stafford Act by the President. 42 U.S.C. 5191(b). When the President makes such a declaration, SBA will “deem that such an emergency affects each State or subdivision thereof (including counties), and that each State or subdivision has sufficient economic damage to small business concerns to qualify for assistance under this paragraph and [SBA] shall accept applications for such assistance immediately.” *See* second proviso of paragraph following 15 U.S.C. 636(b)(2)(E). This means that after the President declares an emergency involving Federal primary responsibility under Section 501(b) of the Stafford Act, SBA will immediately make an economic injury disaster declaration using this new authority. Once SBA makes this declaration, small businesses

¹ SBA notes that the Senate Report to the Disaster Assistance for Rural Communities Act states that Congress intends that SBA’s rural disaster declaration authority is triggered solely in situations where the President has declared a major disaster limited to public assistance only. S. Rep. No. 117-103, Section I (May 3, 2022).

and nonprofit organizations of any size would be eligible to apply for economic injury disaster loans.

SBA is revising 13 CFR 123.4, *What is a disaster area and why is it important?*, to provide that contiguous counties are not included in the disaster area for rural disaster declarations. SBA is adopting this interpretation based on clear Congressional intent, as stated in the Senate Report to the Disaster Assistance for Rural Communities Act: “The SBA declaration authorized under paragraph 16 of section 7(b) may not be applied to contiguous counties.” S. Rep. No. 117-103, Section IV (May 3, 2022). When SBA makes a rural disaster declaration, physical and economic injury disaster loans will be available only in the declared disaster area, not in any counties or political subdivisions that are contiguous to the declared area.

SBA is also revising this provision to state that when SBA issues an economic injury disaster declaration in response to a determination of an emergency involving Federal primary responsibility by the President, the disaster area shall include each State or subdivision thereof (including counties) included in the President’s emergency determination. If the President determines that a nation-wide emergency exists, then SBA will issue a nation-wide economic injury disaster declaration.

SBA is revising several sections in 13 CFR part 123, subpart F, *Military Reservist Economic Injury Disaster Loans*, to reflect changes made by Sec. 877 of the NDAA 2020. The NDAA 2020 expanded eligibility for Military Reservist Economic Injury Disaster Loans (MREIDLs) from reservists called to “active duty” to reservists called to “active service.” The term “active service” has the meaning given in 10 U.S.C. 101(d)(3) and includes both “active duty” and “full time National Guard duty.”² The NDAA also

² “Active duty” is defined as full-time duty in the active military service of the United States. Such term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. 10 U.S.C. 101(d)(1). The term “full-time National Guard duty” means training or other duty, other than inactive duty, performed by a member of the Army National Guard of the United States or the Air National Guard of the United States in the member’s status as a member of the National Guard of a State or territory,

removed the requirement that the reservist be serving during a “period of military conflict” and replaced it with the requirement that the reservist be serving for a period of more than 30 consecutive days.³

SBA is revising 13 CFR 123.500, *Definitions*, paragraph (b) to reflect the new definition of military reservist as a member of a reserve component of the Armed Forces ordered to active service. SBA is also revising paragraph (c) to remove the definition of “period of military conflict” and replace it with the definition of “active service”, as provided in the NDAA 2020.

SBA is revising 13 CFR 123.501, *Under what circumstances is our business eligible to be considered for a Military Reservist Economic Injury Disaster Loan?*, to remove the words “active duty” and replace them with “active service” in paragraph (a). SBA is also revising paragraph (c) to remove the requirement that the essential employee be called to active duty during a military conflict and replace it with the requirement that the essential employee be called to active service for a period of more than 30 consecutive days.

SBA is similarly revising 13 CFR 123.507, *Under what circumstances will SBA consider waiving the \$2 million loan limit?*, to remove the requirement that the essential employee be called to active duty during a military conflict and replace it with the requirement that the essential employee be called to active service for a period of more than 30 consecutive days.

Finally, SBA is revising §§ 123.503, 123.504(a) and (f), 123.505, 123.506, 123.507, and 123.511 to remove the words “active duty” and replace them with “active

the Commonwealth of Puerto Rico, or the District of Columbia under section 316, 502, 503, 504, or 505 of title 32 [32 USCS §§ 316, 502, 503, 504, or 505] for which the member is entitled to pay from the United States or for which the member has waived pay from the United States. 10 U.S.C. § 101(d)(5).

³ “Period of military conflict” was defined as (i) a period of war declared by the Congress; (ii) a period of national emergency declared by the Congress or by the President; or (iii) a period of a contingency operation, as defined in section 101(a) of title 10, United States Code. *See* Sec. 402(a) of Pub. L. 106-50, (August 17, 1999).

service.” All of the changes to 13 CFR Subpart F have already been implemented; this direct final rule merely updates the regulations to reflect current statutory requirements.

II. Justification for Direct Final Rule

Agencies typically utilize direct final rulemakings for routine, non-controversial regulatory actions that are unlikely to receive adverse comments. In direct final rulemaking, an agency publishes a final rule with a statement that the rule will go into effect unless the agency receives significant adverse comment within a specified period. Significant adverse comments are comments that provide strong justifications why the rule should not be adopted or for changing the rule. If the agency receives no significant adverse comment in response to the direct final rule, the rule goes into effect. If the agency receives significant adverse comment, the agency withdraws the direct final rule and may instead issue a proposed rulemaking.

SBA has determined that the regulatory changes addressed in this direct final rulemaking are routine, non-controversial, and not likely to result in adverse comments. SBA is implementing changes required by statute and, with the exception of the rural disaster declaration authority, all of the changes are already in effect—SBA is merely updating the regulations in order to conform to the statute. In implementing the rural disaster declaration authority, SBA is adopting regulations that conform to the statute and legislative history without any extraneous interpretation. Because the changes in this rule are prescribed by statute, SBA does not expect significant adverse comments.

Compliance with Executive Orders 12866, 12988, 13132, 13175, the Congressional Review Act (5 U.S.C. 801-808), Paperwork Reduction Act (44 U.S.C., Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601-612).

Executive Orders 12866 and 13563

The Office of Management and Budget has determined that this rule is not a significant regulatory action under Executive Order 12866, and a Regulatory Impact

Analysis is not required. No action is warranted for Executive Order 13563 as the rule is not significant and no Regulatory Impact Analysis is required.

Executive Order 12988

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have preemptive effect or retroactive effect.

Executive Order 13132

This rule does not have federalism implications as defined in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Executive Order. As such it does not warrant the preparation of a Federalism Assessment.

Executive Order 13175

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Congressional Review Act

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, also known as the Congressional Review Act or CRA, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. SBA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the

Comptroller General of the United States. A major rule under the CRA cannot take effect until 60 days after it is published in the *Federal Register*. The Office of Information and Regulatory Affairs has determined that this rule is not a “major rule” as defined by 5 U.S.C. 804(2). Therefore, this rule is not subject to the 60-day restriction.

Paperwork Reduction Act, 44 U.S.C. Ch. 35

SBA has determined that this rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

Regulatory Flexibility Act, 5 U.S.C. 601

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the APA or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the Federal Register. 5 U.S.C. 603, 604.

Rules that are exempt from notice and comment are also exempt from the RFA requirements, including conducting a regulatory flexibility analysis, such as when—among other exceptions—the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. SBA Office of Advocacy Guide: How to Comply with the Regulatory Flexibility Act, Ch.1. p.9. Since this rule is exempt from notice and comment, SBA is not required to conduct a regulatory flexibility analysis.

List of Subjects in 13 CFR Part 123

Disaster assistance, Loan mitigation, Loan programs—physical disaster (home, business).

For the reasons set forth in the preamble, the SBA amends 13 CFR part 123 as follows:

PART 123—DISASTER LOAN PROGRAM

1. The authority citation for part 123 is revised to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 636(d), 657n, and 9009.

2. Amend § 123.3 by revising paragraph (a) introductory text and adding paragraphs (a)(6) and (7) to read as follows:

§ 123.3 How are disaster declarations made?

(a) There are seven ways in which disaster declarations are issued which make SBA disaster loans possible:

* * * * *

(6) SBA makes a physical disaster declaration in a rural area (rural disaster declaration) upon request from the Governor of the State or the Chief Executive of the Indian tribal government in which the rural area is located. Rural area means any county or other political subdivision of a State, the District of Columbia, or a territory or possession of the United States that is designated as a rural area by the Bureau of the Census. The following conditions must be met:

(i) The President has declared a Major Disaster for the rural area, but has not authorized individual assistance; and

(ii) Any home, small business concern, private nonprofit organization, or small agricultural cooperative in the rural area has incurred significant damage. Significant damage means uninsured losses of 40 percent or more of the estimated fair replacement value or pre-disaster fair market value of the damaged property, whichever is lower.

(7) SBA makes an economic injury disaster declaration in response to a determination of an emergency involving Federal primary responsibility by the President.

* * * * *

3. Revise § 123.4 to read as follows:

§ 123.4 What is a disaster area and why is it important?

Each disaster declaration defines the geographical areas affected by the disaster. Only those victims located in the declared disaster area are eligible to apply for SBA disaster loans. When the President declares a major disaster, the Federal Emergency Management Agency defines the disaster area. In major disasters, economic injury disaster loans and IDAP loans may be made for victims in contiguous counties or other political subdivisions, provided, however that with respect to major disasters which authorize public assistance only, SBA shall not make economic injury disaster or IDAP loans in counties contiguous to the disaster area. Except for rural disaster declarations (as defined in § 123.3), disaster declarations issued by SBA include contiguous counties for both physical, economic injury and, in some cases IDAP assistance. Rural disaster declarations do not include assistance for contiguous counties. Contiguous counties or other political subdivisions are those land areas which abut the land area of the declared disaster area without geographic separation other than by a minor body of water, not to exceed one mile between the land areas of such counties. When SBA issues an economic injury disaster declaration in response to a determination of an emergency involving Federal primary responsibility by the President, the disaster area shall include each State or subdivision thereof (including counties) included in the President's emergency determination.

4. Amend § 123.500 by revising paragraphs (b) and (c) to read as follows:

§ 123.500 Definitions.

* * * * *

(b) *Military reservist* is a member of a reserve component of the Armed Forces ordered to active service.

(c) *Active service* has the meaning given in 10 U.S.C. 101(d)(3):

(1) Service on active duty; or

(2) Full-time National Guard duty.

* * * *

5. Amend § 123.501 by revising paragraphs (a) and (c) to read as follows:

§ 123.501 Under what circumstances is our business eligible to be considered for a Military Reservist Economic Injury Disaster Loan?

* * * * *

(a) It is a small business as defined in 13 CFR part 121 when the essential employee was called to active service,

* * * * *

(c) The essential employee has been called-up to active service for a period of more than 30 consecutive days,

* * * * *

6. Amend § 123.507 by revising paragraph (b) to read as follows:

§ 123.507 Under what circumstances will SBA consider waiving the \$2 million loan limit?

* * * * *

(b) Your small business is in imminent danger of going out of business as a result of one or more essential employees being called up to active service for a period of more than 30 consecutive days, and a loan in excess of \$2 million is necessary to reopen or keep open the small business; and

* * * * *

§ 123.503, 123.504, 123.505, 123.506, 123.511 [Amended]

7. In addition to the amendments set forth above, in part 123, remove the words “active duty” and add in their place the words “active service” in the following places:

- a. Section 123.503;
- b. Section 123.504(a) (three places) and (f);
- c. Section 123.505 heading and text;

d. Section 123.506; and

e. Section 123.511 (two places).

Isabella Casillas Guzman,
Administrator.

[FR Doc. 2023-08010 Filed: 4/18/2023 8:45 am; Publication Date: 4/19/2023]